



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/08675/2015

THE IMMIGRATION ACTS

Heard at Field House
On 8 February 2018

Decision & Reasons Promulgated
On 28 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

RUMI BEGUM
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr I Khan, Counsel

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS ON ERROR OF LAW

The appeal

1. The appellant is a citizen of Bangladesh, born on 2 April 1988. On 16 March 2014, she married Mr Mohammed Raja Hussain ("the sponsor"), who is a British citizen born on 1 April 1970. She then made an application for entry clearance as a partner under Appendix FM of the Immigration Rules, HC395. On 17 September 2015, the respondent Entry Clearance Officer refused the application because:

- As a result of checks being made with HMRC concerning the sponsor's claimed income, it was considered that false information had been provided (paragraph S-EC.2.2(a) of Appendix FM of the Immigration Rules);
 - Insufficient evidence had been provided to show the marriage was genuine and subsisting and that the parties intended to live together permanently in the UK (paragraphs E-ECP.2.6 and 2.10 of Appendix FM);
 - The sponsor's gross income was below the minimum income requirement of £18,600 per annum (paragraph E-ECP.3.1 of Appendix FM); and
 - The application did not raise exceptional circumstances to warrant a grant of leave outside the rules on article 8 grounds.
2. The appeal was heard in the First-tier Tribunal, sitting at Taylor House, London, on 10 April 2017. The judge heard evidence from the sponsor and submissions from the parties' representatives. The judge was told by the sponsor that his income had greatly increased shortly before the appellant made her application for entry clearance and the judge was shown bank statements to support this. However, she concluded she could not be satisfied the appellant's bank account had not been manipulated in order to present a particular (that is, false) state of affairs. Again, with regard to the relationship, she was not satisfied there was sufficient evidence of contact to show a genuine and subsisting relationship existed. It followed there was no family life to engage article 8.
3. The grounds seeking permission to appeal argued there were five material errors of law in the judge's decision:
- The judge had misdirected herself by stating the burden of proof rested on the appellant: it rested on the respondent to show the marriage was a sham;
 - The judge applied a "reasonable suspicion" test, as opposed to a balance of probabilities;
 - The judge should have found the minimum income requirement was met on the basis of the documentary evidence provided, which complied with the requirements of the rules;
 - The burden of proving dishonesty was on the respondent but the judge directed herself that the burden rested on the appellant; and
 - The judge had applied a "reasonable suspicion" test in relation to the evidence of the sponsor's income and, if she had concerns that there was no additional evidence from the sponsor's employer, she should have adjourned the appeal to give the appellant an opportunity to get the evidence.
4. Permission to appeal was granted by the First-tier Tribunal in rather obscure terms:
1. ...
 2. The grounds assert that the Judge erred in the assessment of Family life, financial requirements and the burden of proof.
 3. Permission is granted."

5. The respondent has filed a rule 24 response opposing the appeal. This argues that the judge gave cogent reasons for rejecting the sponsor's claimed salary increase. She also gave reasons for concluding the marriage was not genuine or subsisting. The decision was adequately reasoned and revealed no material error of law.
6. I heard submissions from the representatives as to whether the decision of the First-tier Tribunal contains a material error of law.

Decision on error of law

7. Mr Khan did not adopt the grounds seeking permission to appeal, which he had not drafted. In particular, he did not argue the judge had misapplied the burden of proof. That seems perfectly right given the judge directed herself correctly as to the general position at paragraph 10. Of course, where the respondent asserts that deception has been used, the burden is on the decision-maker to establish any contested facts. The civil standard of proof applies.
8. There is no document verification report in this case. The judge did not make a finding of deception. She found the documents submitted as evidence of the sponsor's financial circumstances did not satisfy her that the sponsor was earning the minimum required of £18,600. The burden rested on the appellant on a balance of probabilities to show the minimum income requirement was met and she failed to discharge that burden. There is no error in the decision of the kind suggested in the grounds.
9. Mr Khan, after changing his position, confirmed he was not arguing the judge's findings were perverse. That also seems a perfectly sensible approach. In *R (Iran and Others v SSHD)* [2005] EWCA Civ 982 Brooke LJ set out the test for perversity as follows:

"11. ... It is well known that "perversity" represents a very high hurdle. In *Miftari v SSHD* [2005] EWCA Civ 481, the whole court agreed that the word meant what it said: it was a demanding concept. The majority of the court (Keene and Maurice Kay LJ) said that it embraced decisions that were irrational or unreasonable in the *Wednesbury* sense (even if there was no willful or conscious departure from the rational), but it also included a finding of fact that was wholly unsupported by the evidence, provided always that this was a finding as to a material matter."
10. Mr Khan did not point to anything in the decision showing irrationality or unreasonable on the part of the judge. He suggested there was ample evidence capable of showing a subsisting relationship and most judges would have found in favour of the appellant. However, the fact other judges would have come to a different decision is not the test. Moreover, the issue of the relationship had to be looked at in the round with the evidence of finance. An adverse credibility finding with regard to one matter was likely to enter into the assessment of others.
11. Mr Khan pointed to the evidence of the sponsor's salary which had been before the judge, including a P60 and annual tax summary. These both showed gross income of £18,600. However, it cannot be said the judge overlooked or misunderstood material evidence. She was fully aware of the documents

purporting to show the sponsor's income reached the minimum income requirement (see paragraph 19).

12. The point was that she did not accept this evidence represented a true state of affairs. She was entitled to infer from the absence of further documents showing the sponsor continued to earn that amount that the situation had been manipulated, as she put it, and the sponsor's claim to have had a substantial pay rise was not reliable. She noted the very large pay rise had apparently been given just before the application was to be made. She noted the sponsor's evidence, as set out in his statement, that he had received pay rises over a period of time, did not accord with the oral evidence. She noted the lateness of the production of the sponsor's bank statements. She noted the unexplained deposit of £1500 from the employer into the sponsor's account. There is no error in this reasoning.
13. I note that no additional evidence has been filed on behalf of the appellant showing the sponsor did continue to receive the increased salary. The sponsor did not attend the hearing. I note the employer's letter in the appellant's bundle did not state his salary or mention the pay rise, let alone the reason for it.
14. Mr Khan did not adopt the grounds seeking permission to appeal to the extent they relied on case law relevant to EEA cases on marriage of convenience. That was not the issue before the judge in this case. She had only to decide whether the evidence showed the relationship was genuine and subsisting. The burden rested on the appellant. She noted there was hardly any evidence of communication. Her finding was open to her on the evidence.
15. To the extent Mr Khan relied on the points made in the grounds about the judge employing the wrong standard of proof, namely one of reasonable suspicion, I reject them. The judge was entitled for the reasons she gave to find the evidence of the sponsor's finances was unreliable and therefore the minimum income requirement had not been met. Likewise, she was entitled to find the relationship was not genuine or subsisting due to the lack of cogent evidence. The judge's findings were fully reasoned and based on the evidence. The decision does not contain any error of law and shall stand.

NOTICE OF DECISION

The appeal is dismissed. The Judge of the First-tier Tribunal did not make a material error of law and her decision dismissing the appeal is upheld.

An anonymity direction has not been made.

Signed

Dated 8 February 2018

Deputy Judge of the Upper Tribunal Froom